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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/614,305

07/03/2003

Dwight B. DuBois

CENT:005

8237

29395

7590

11/03/2006

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EXAMINER

RICCI, JOHN A

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/614,305		DUBOIS ET AL	
	Examiner		Art Unit	
	John Ricci		3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-8, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 4-8 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4 & 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaufman 5,934,551.

Kaufman shows a package including a top, first side, bottom, second side, an internal separator 79 which forms internal compartments, and windows 94 for viewing the contents of the compartments. Kaufman does not disclose that this container could be used to collect a vial, but it includes all features claimed and could be used for this purpose with no structural change. The separator is broadly considered to "hold" the contents.

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Claim 7 is rejected under 35 U.S.C. 102(e) as being anticipated by Petrelli et al 6,871,778.

Petrelli shows a container that could contain a vial, formed by folding a single sheet, including a top, first side, bottom, second side, internal separator 26, and retainer 24 within the container, which could contain a vial.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8, & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrelli et al in view of Kaufman.

Petrelli shows a container having a top, bottom, sides, internal separator 26, and retainer 24, but there does not appear to be windows to view the contents of the container.

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One would recognize that it would be desirable to provide windows in the wall of a container to enable a user to view the contents. For example, Kaufman shows that a container may include an internal separator 79 which forms compartments, and windows 94 to view contents of respective compartments. These windows would be desirable in the container of Petrelli to allow one to view the contents. It would have been obvious to one of ordinary skill in the art to provide the container of Petrelli with windows, as suggested by Kaufman.

* * * * *

Claim 12 is allowed.

* * * * *

Applicant's arguments filed 8/11/06 have been fully considered but they are not persuasive.

The claim that the container is "for a vial" is a functional limitation that does not define structure beyond that shown by Kaufman or Petrelli. While a small vial may undesirably move around in the package, it would be possible to place a larger vial in the container, large

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enough that it contacts the divider 79 (Kaufman) or 24 (Petrelli) and is frictionally held from moving around during transport. Although Kaufman and Petrelli do not disclose retaining means customized to specially hold a particular vial, the claims do not require such structure, only that the container is capable of "holding" a vial, and given a suitably sized and shaped "vial", the prior art would be capable of this function.

* * * * *

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

* * * * *

This letter was prepared by Examiner John Ricci, who can be reached at:

Voice: 571-272-4429


Fax: Use 571-273-8300 for papers to be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.

PTO main switchboard: 800-786-9199.

Visit our Web site at www.uspto.gov.


JOHN RICCI
PRIMARY EXAMINER
ART UNIT 3711